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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 19

ALFRED S. PENN,

Petitioner,

vs.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, A CORPORATION,

Respondent.

REPLY BRIEF FOR PETITIONER.

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RESPONDENT'S STATEMENT OF THE CASE.

Respondent's statement of facts is somewhat extended and is not entirely accurate. The facts appearing on the page citation of the record are so commingled with conclusions of the writer that it is quite impossible to identify either.

On pages 4 and 5 of petitioner's brief is an accurate account of the occurrence quoted verbatim from the record.

In this proceeding we are interested only in determining whether there is sufficient evidence in the record to sustain the verdict. It is immaterial that on three subsequent occasions the respondent obtained signed statements from the petitioner, or that the other members of the crew testified in some particulars at variance with the testimony of the plaintiff. Was there evidence that the coupler failed to work efficiently?

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ARGUMENT.

The main theme of defendant's argument seems to be based on *C. M. S. P. & P. R. Co.* v. *Linehan*, 66 Fed. (2d) 373 (1933), a case from the eighth circuit. There the Court said:

> "The question must be, was there an earnest and honest endeavor to operate the coupler in an ordinary and reasonable manner, and was enough force applied to open the knuckle if the coupler was in proper condition?"

The question posed is one of fact for the jury—not one of law for a reviewing court.

The court of appeals in this case held that the jury decided the case differently from the way the judges of that court would have decided it.

Respondent relies upon *Meisenhelder* v. *Bryam*, 182 Minn. 615 (1930), holding that the railroad company was not liable although the deceased had several times placed his foot against the pinlifter and it failed to work.

Respondent also relies upon *Western & Atlantic R. R. Co.* v. *Gentle*, 198 S.E. 257 (Ga. App. 1938), wherein it was held that a railroad company has complied with the Safety Appliance Statutes when it equips its cars with couplers *designed* to couple automatically upon impact, regardless of whether the coupler works efficiently or not.

In the case of *C. & O. Ry. Co.* v. *Charlton*, 247 Fed. 34 (1917), cited by respondent, it appears from the evidence that at the time of the accident the knuckles were closed but that the cars would have coupled automatically by impact if they had been open. It also appeared that there

was a pinlifter on the car by which the coupler might have been opened if it had been used.

The cases cited by respondent are of no assistance to this Court. Decisions of state courts construing the Safety Appliance Acts, while persuasive, are not binding upon the federal courts. All courts, including the Court of Appeals, are bound by the decisions of the United States Supreme Court. The applicable decisions of the United States Supreme Court construing a federal statute are binding on all courts.

Employment in train service on a railroad, even at best, is an extremely hazardous occupation. The purpose of the Coupler Act was to compel railroads to provide appliances which in some substantial degree would tend to make the occupation more safe.

The object of this section being remedial and humanitarian, it is not to be construed so narrowly as to defeat its purpose.

This Court has held on many occasions that the duty to provide safe couplers is absolute; it cannot be delegated, nor can the railroad company in any manner evade liability for damages for injuries resulting from a failure of a coupler to work efficiently. It is no excuse that the railroad company exercised reasonable care to comply with the law.

In the early days some courts were prone to limit the broad application of these laws as passed by Congress. For many years some courts persisted in whittling away the various rights granted by these laws. But in recent years the Supreme Court of the United States has restored these federal statutes to their proper standing. This court has decided that these Acts should be given a liberal construction, and that Congress intended that the jurors should be the arbiters of the facts.

Substantially all of the cases cited by respondent are

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cases where the courts have attempted to usurp the function of a jury, contrary to the recent decisions of this Court.

Respondent states in its brief (p. 16) that it has found no cases which hold that the purpose of Section 2 of the Act is to impose on carriers the absolute duty to furnish couplers which, regardless of the force exerted, or any other condition or circumstance, uncouple instantly on the first attempt.

That is not the question. In this case the injured employee made at least nine attempts to operate the pinlifter before it worked. The jury properly found the defendant guilty. It also answered a special interrogatory (Trans. 172) submitted by respondent to the effect that the coupler was defective. It was not within the province of the Court of Appeals to substitute its conclusions of fact for that of the jury. Although the position in which petitioner tried to operate the coupler may have been awkward it was not a condition of his own choosing. It was the railroad company that built and furnished the cars in that condition, and if the position required of the plaintiff in order to operate the coupler was awkward, it was the railroad's fault, and not the plaintiff's.

Change of Front.

The arguments of counsel for respondent are somewhat in conflict with statements made by him upon the trial of the case.

The Petitioner requested the giving of instruction "C" to the effect that a railroad has the duty not only to provide couplers coupling automatically by impact, but to keep them in such operative condition that they will always perform their function, and that the test of compliance is their operating efficiency (Trans. 158). Counsel for respondent objected to the giving of that instruction. The

following colloquy between the trial Judge and counsel for respondent occurred:

"By the Court: What do you say about the proof of the fact, if it be a fact, that the plaintiff tried unsuccessfully five times to uncouple the car by means of a lever? What do you say about the sufficiency of that proof?

• • • • •

"By Mr. Slater: If the evidence showed that the slack was in at the time, it would show a defect.

"By the Court: Don't worry about the slack. Forget the slack. Just assume that the slack was in and that the evidence showed that the plaintiff tried five times to uncouple the cars, would that show a defect in the coupler?

"By Mr. Slater: You would have to show what kind of force the man used himself.

"By the Court: Assume that he used sufficient force.

"By Mr. Slater: I would say if he tried and the slack was in, there would be a defect.

"By the Court: The slack was in and he tried with sufficient force to lift the handle, that would show a defect?

"By Mr. Slater: Yes." (Trans. 159.)

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ALLEGED ERRORS NOT CONSIDERED BY THE COURT OF APPEALS.

Respondent asks that the cause be remanded to the Court of Appeals in the event of a reversal.

Both of the questions which counsel alleges were not disposed of will necessarily be settled by this appeal.

The first question was the alleged error in refusing to grant defendant's motion to instruct the jury to find the defendant not guilty. If this Court decides this matter in favor of petitioner, the question of refusing to grant defendant's motion to instruct the jury is thereby disposed of.

The second point raised by respondent has to do with plaintiff's requested instruction "C" appearing on page 158 of the transcript. That instruction has to do with the duty of a railroad company to provide proper couplers and keep them in operative condition, and that the test of compliance is the operating efficiency of the couplers.

If this Court finds in favor of petitioner, the question of the giving of that instruction is thereby settled.

It would, therefore, seem proper, if the Court finds for petitioner, to reverse the judgment of the Court of Appeals without remandment.

Respectfully submitted,

ROYAL W. IRWIN,
Attorney for Petitioner.